

13 CSR 35-71.030. Hearings and Judicial Review

PURPOSE: This rule addresses the procedures for license denial, revocation, suspension, or suspension of intake and the right for an administrative hearing and judicial review for an agency aggrieved by a final decision of the director.

*EMERGENCY STATEMENT: Section 210.493, RSMo., of HB 557 (2021) authorizes the Department of Social Services to promulgate regulations, including emergency regulations, to implement new requirements for background checks of officers, managers, contractors, volunteers with access to children, employees, other support staff and owners of Licensed Residential Care Facilities (LRCF). The law further authorizes the Department to promulgate regulations to implement the requirement that the Department conduct background checks on any person who has unsupervised contact with children and any adult who resides at a LRCF. The background checks are being conducted to help ensure that certain individuals who are associated with these facilities do not have a record of criminal conduct or substantiated incidents of child abuse or neglect which may pose a risk to the children served at these facilities. The background checks will include a fingerprint based check of the individual's criminal record, the sexual offender registry, the Family Care Safety Registry, the Central Registry and registries of other states where the individual resided. HB 557 also requires DSS to implement requirements that residential care facilities notify DSS that they are conducting operations in Missouri. See §§210.1250 through 210.1286 RSMo. HB 557 included an emergency clause which declared HB 557 to be an emergency act within the meaning of the Missouri Constitution because immediate action is necessary to protect children, and it was necessary for the immediate preservation of the public health, welfare, peace and safety. The implementation of the background checks required in this regulation will immediately enable the Department to conduct background checks, to determine whether individuals are eligible for employment or presence at these institution and implement the new notification requirements. This regulation is part of a series of regulations which establish the general principles governing the implantation of all of the regulations governing residential care facilities in Missouri. The Department of Social Services has determined that promulgation of this regulation on an emergency basis is necessary to address the danger to public health, safety and/or welfare of children in Missouri identified by the Missouri General Assembly. The Department of Social Services therefore has a compelling governmental interest to promulgate this section on an emergency basis. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. The Department of Social Services believes that this emergency regulation is fair to all interested persons and parties under the circumstances. The Department of Social Services published a draft of this emergency regulation on its website and solicited feedback from the public and stakeholders through e-mail and at public meeting held on August 5, 2021. The Department A proposed amendment covering this same material will be published in the **Missouri Register**. This emergency amendment was filed [date], effective [date], and expires [date].*

(1) License Denial or License Revocation.

(A) The division may refuse to issue a license to an applicant, or may deny or revoke the license of a licensee, who--

1. Fails consistently to comply with the applicable provisions of [\[sections\] §§ 210.481 - 210.536, 210.1250 through 210.1286, RSMo](#), and the applicable corresponding rules;
2. Violates any of the provisions of its license;
3. Violates **federal or** state laws or rules relating to the protection of children;
4. Abuses or neglects children, or is the subject of multiple or serious reports of child abuse or neglect which upon investigation results in a **substantiated finding of child abuse or neglect**; [court adjudicated, probable cause, and/or preponderance of evidence finding, or (effective August 4, 2008) are] **or is found guilty, pleads guilty, or pleads no contest to any crime which would render an individual ineligible for employment or presence at the LRCF pursuant to §210.493 RSMo**[felony crimes against persons as specified in Chapters 565, 566, 567, 568, and 573, RSMo, and (effective the date of this amendment) felony possession, delivery, distribution, manufacturing, or production of controlled substance crimes as specified in Chapter 195, RSMo, or the same serious crimes against persons regardless of the state or country in which the crime was committed and/or court adjudicated, probable cause, and/or preponderance of evidence child sexual abuse and/or serious child physical abuse and/or serious child neglect. An agency shall also exclude from employment persons who are on the respective Department of Health and Senior Services and/or the Department of Mental Health lists that exclude child or adult care employment and/or licensure and the agency fails to take corrective action acceptable to the division. The division may make limited exceptions to the above exclusionary employment criteria in extraordinary circumstances where the agency and the employee establish that the potential employee is essential to the success of the licensed residential treatment agency for children and youth, the employee poses no risk to the welfare, health, and safety of the children in placement, the employee is not listed on the sexual offender registry and has no history of court adjudicated, probable cause, and/or preponderance of evidence sexual abuse. The division may require that the prospective employee and the agency submit proof that the employee or prospective employee has successfully completed any and all sentences imposed and any reasonably necessary or required medical, psychiatric, and/or mental health treatment necessary to assure that the employee or prospective employee poses no danger to the health, safety, and welfare of children. The agency shall file a written application for an exception to the requirements of this section. The application shall contain detailed information and documentation supporting the request. In the event that the division denies the request the employee or prospective employee and the agency may file a written request for an informal meeting pursuant to paragraph (1)(A)11. of this section];

5. Employs persons who **the Division has found ineligible for employment or presence at the LRCF pursuant to §210.493 RSMo and 13 CSR 35-71.015, or who** abuses or neglects children[, persons who are the subjects of multiple or serious reports of child abuse or child neglect which upon investigation results in a court adjudicated, probable cause, and/or preponderance of evidence finding or (effective August 4, 2008) are found guilty, plead guilty, or plead no contest to are found guilty, plead guilty, or plead no contest to felony crimes against persons as specified in Chapters 565, 566, 567, 568, and 573, RSMo, and (effective the date of this amendment) felony possession, delivery, distribution, manufacturing, or production of controlled substance crimes as specified in Chapter 195, RSMo, or the same serious crimes against persons regardless of the state or country in which the crime was committed and/or court adjudicated, probable cause, and/or preponderance of evidence child sexual abuse and/or serious child physical abuse and/or serious child neglect. An agency shall also exclude from employment persons who are on the respective Department of Health and Senior Services and/or the Department of Mental Health lists that exclude child or adult care employment and/or licensure and the agency fails to take corrective action acceptable to the division. The division may make limited exceptions to the above exclusionary employment criteria in extraordinary circumstances where the agency and the employee establish that the potential employee is essential to the success of the licensed residential treatment agency for children and youth, the employee poses no risk to the welfare, health, and safety of the children in placement, the employee is not listed on the sexual offender registry and has no history of court adjudicated, probable cause, and/or preponderance of evidence sexual abuse. The division may require that the prospective employee and the agency submit proof that the employee or prospective employee has successfully completed any and all sentences imposed and any reasonably necessary or required medical, psychiatric, and/or mental health treatment necessary to assure that the employee or prospective employee poses no danger to the health, safety, and welfare of children. The agency shall file a written application for an exception to the requirements of this section. The application shall contain detailed information and documentation supporting the request. In the event that the division denies the request the employee or prospective employee and the agency may file a written request for an informal meeting pursuant to paragraph (1)(A)11. of this section];

6. Furnishes or makes any misleading or false statements or reports to the division;

7. Refuses to submit any reports or refuses to make available to the division any records required in making an investigation;

8. Fails or refuses to submit to an investigation by an authorized and identified representative of the division at any reasonable time;

9. Fails to provide, maintain, equip, and keep in safe and sanitary condition the premises established or used for the care of children as required by law, rule, or ordinance applicable to the location of a facility;

10. Fails to provide adequate financial resources for the satisfactory care of children being served, or the upkeep of the premises, or both; [or]

11. **Fails to satisfactorily comply with all fire, safety, health, and sanitation inspections as may be required by state law or local ordinance and required under section 210.252; or**

12. There is a health or safety concern for the children at the LRCF. [When a potential employee of a licensed residential treatment agency for children and youth is excluded from employment pursuant to paragraphs 13 CSR 35-71.030(1)(A)4. and 5. above, the Children's Division may grant an informal meeting only if the potential employee and the licensed residential treatment agency for children and youth request the informal meeting in writing and explain, based on the specified criteria, the reason the employee would be hired and how children in residence at the operating site would be protected. When the written request is received, the division shall schedule an informal meeting as soon as practicable. The meeting shall take place before the division director/designee. The division shall notify the agency of the date and time of the meeting. The meeting may be continued at the request of the agency, but the employment exclusion shall remain in effect pending the meeting. The meeting shall be informal, the rules of evidence shall not apply and both the agency and the division may submit any information relevant to the employment issues. The purpose of the meeting will be to determine the potential employee's suitability for employment based on the criteria listed in paragraphs 13 CSR 35-71.030(1)(A)4. and 5. above. Upon receipt of the final decision of the division, the agency may decide to accept the final decision or file petition for a hearing on administrative review pursuant to section (5) of this rule.]

(B) The division shall provide written notice of denial or revocation of licensure to the agency, which shall include the reason(s) for the denial or revocation. Upon receipt of the notice of denial or revocation, the agency shall cease operation within ten (10) business days unless stayed by an appropriate administrative or judicial order, or a request for an administrative hearing is made before the expiration of the ten (10) business days from the date of the notice.

(C) The agency may appeal the decision of the division to deny or revoke the license by filing a request for appeal with the division within ten (10) days after receipt of the notice of denial or revocation.

(D) Any person aggrieved by a decision of the division to deny or revoke a license shall be entitled to a hearing on administrative review under section (5) of this rule.

(E) An agency may not reapply for licensure within one (1) year from the date of denial or revocation.

(2) License Suspension.

(A) The division shall have the authority to suspend the license of an agency when--

1. The division determines that the suspension of the license is necessary to protect the health, safety, and welfare of children who are or may be placed at the operating site; and

2. The division determines that one (1) or more of the criteria set out in [\[section\] §§ 210.496, 210.1250 through 210.1286 RSMo](#) and/or subsection (1)(A) of this rule may exist; and

3. The division has reasonable cause to believe that the agency will be able to develop and effectively implement a corrective action plan to resolve the concerns which gave rise to the suspension of the license.

(B) The agency shall cease operations within ten (10) business days of the date the division issues an order suspending the license of the agency unless--

1. The agency files a written request for administrative review within ten (10) business days of the date of the order; or

2. The order is stayed by an appropriate administrative or judicial order.

(C) The order for suspension of the license shall be in writing. The order shall include:

1. The factual and legal basis for the order; and

2. Notification of the right of the agency to administrative review. The division may extend the order if there has been no substantial change in the circumstances since the entry of the original order or if there are new grounds for extension of the order.

(D) The division may reinstate a suspended license on its own motion or upon written application by the agency. The division may reinstate that license if the division determines that--

1. The agency has developed and successfully implemented a corrective action plan approved by the division to remedy the concerns which resulted in the license suspension; and

2. The agency meets all of the criteria for licensing; and

3. The division determines that suspension of the license is no longer necessary to protect the health, safety, and welfare of the children involved.

(3) *Suspension of Intake.*

(A) The division shall have the authority to suspend the authorization of the agency to admit additional children into placement during time periods proscribed by the division when the division determines that the agency is not in compliance with the requirements of [\[section\] §§210.493, 210.496, 210.1250 through 210.1286 RSMo](#) and/or subsection

(1)(A) of this rule and--

1. The addition of additional children to the agency is not in the best interests of the children already placed within the agency or who may be placed with the agency; and

2. Allowing the placement of additional children with the agency may pose a risk to the health, safety, and welfare of children already placed with the agency or who may be placed with the agency.

(B) The order for suspension of intake shall be in writing. The order shall include--

1. The factual and legal basis for the order; and

2. Notification of the right of the agency to administrative review. The division may extend the order if there has been no substantial change in the circumstances since the entry of the original order or if there are new grounds for extension of the order. A suspension of intake shall proscribe the number of additional children which the agency is authorized to accept for placement, if any, but it shall not include a requirement that children currently placed with the agency shall be removed.

(C) If the division finds that suspension of intake prior to the opportunity for a hearing on administrative review is necessary to protect the health, safety, and welfare of children then the division has the option to make the order to suspend intake effective immediately upon delivery to the agency; otherwise the order shall be effective ten (10) business days from the date of the entry of the order unless--

1. The agency files a written request for administrative review within ten (10) business days of the date of the order; or

2. The order is stayed by an appropriate administrative or judicial order.

(D) If the division issues an order to immediately suspend intake the division shall schedule an informal meeting to review the decision with the agency as soon as practicable. The meeting shall take place before the director or his/her designee. The division shall notify the agency of the date and time for the meeting. The meeting may be continued at the request of the agency, but the order shall remain in effect pending the meeting. The meeting shall be informal, the rules of evidence shall not apply, and both the agency and the division may submit any information relevant to the issues in the case. The purpose of the meeting will be:

1. For the division to determine whether there is probable cause to find that a suspension of intake is necessary to protect the best interests of the children placed with the agency or who may be placed with the agency pending a fair hearing on administrative review pursuant to section (4), below; and
2. To afford the agency an opportunity to informally provide information relevant to the division's decision and to request relief from the entry of the order.

(E) If the division finds after the meeting that there is probable cause to continue the suspension of intake pending hearing on administrative review the division shall expedite the hearing on administrative review; otherwise the suspension of intake shall be stayed pending hearing on administrative review.

(F) The division may rescind the order suspending intake on its own motion or upon written application by the agency. The division may reinstate the intake if the division determines that--

1. The agency has developed and successfully implemented a corrective action plan approved by the division to remedy the concerns which resulted in the suspension of intake; and
2. The agency meets all of the criteria for licensing; and
3. The division determines that the suspension of intake is no longer necessary to protect the health, safety, and welfare of the children.

(4) Emergency Order Against an Existing License.

(A) The division may issue an order immediately suspending a license prior to a hearing on administrative review when the division finds that there is probable cause to believe that--

1. There is an imminent risk of immediate and significant harm to the health, safety, or welfare of children who are placed or who may be placed with the agency; and
2. The risk is such that the health, safety, or welfare of the children may be at risk if the division's emergency action does not become effective before the agency is afforded an opportunity for a hearing.

(B) The division's findings under this section must be made in writing and set out in the order. The order shall notify the agency of its right to request administrative review and of its right to an informal meeting.

(C) If the division issues an emergency order against a license under this section the division shall schedule an informal meeting to review the decision with the agency as soon as practicable. The meeting shall take place before the director or his/her designee. The division shall notify the agency of the date and time for the meeting. The meeting may be continued at the request of the agency, but the order shall remain in effect pending the meeting. The meeting shall be informal, the rules of evidence shall not apply, and both the agency and the division may submit any information relevant to the issues in the case. The purpose of the meeting will be--

1. For the division to determine whether there is probable cause to find that an emergency exists which requires continuation of the division's action pending a hearing on administrative review pursuant to section (5) below; and

2. To afford the agency an opportunity to informally provide information relevant to the division's decision and to request relief from the entry of the order.

(D) If the division finds after the meeting that there is probable cause for the emergency action and continues the suspension in effect the division shall refer the matter for a hearing on administrative review; otherwise the suspension of the license shall be stayed pending hearing on administrative review.

(5) Hearing on Administrative Review.

(A) The agency which is aggrieved by the decision of the division, (including, but not limited to, a decision to deny a variance, to suspend intake, suspend a license, deny a license application, or revoke an existing license) shall have the right to a hearing on administrative review of the division's decision.

(B) The division shall provide written notice to the agency of its adverse action against the license of an agency. The notice shall--

1. Inform the agency of the nature of the decision;
2. State the factual and legal basis for the division's action;
3. State the effective date of the action, if applicable; and
4. Notify the agency of its right to seek administrative review.

(C) To request a hearing the agency shall submit a written request for administrative review within ten (10) business days of the decision of the division. The request for administrative review shall set forth the basis of the agency's objection to the division's decision.

(D) Unless otherwise provided in this rule, the division's action shall be stayed pending the entry of an order after hearing on administrative review if the agency request administrative review of the division's decision within ten (10) business days of the date of the notice of the division's action.

(E) If the agency requests a hearing the division shall hold an administrative hearing. The hearing shall be held by the director or the director's designee.

(F) Upon receipt of the final decision of the division, the agency can decide to accept the final decision or file petition for judicial review pursuant to [sections 210.526 and 536.100 through 536.140, RSMo](#).

Credits

AUTHORITY: [sections 207.020, 210.493, 210.506](#) [and] [210.526, 210.1286 and 660.017, RSMo](#) 2000.*

* Original authority: [210.506, RSMo 1982](#), amended 1993, 1995.

This rule originally filed as [13 CSR 40-71.030](#). Original rule filed Nov. 9, 1978, effective Feb. 11, 1979. Emergency rescission and emergency rule filed Nov. 1, 1993, effective Nov. 12, 1993, expired March 11, 1994. Emergency rescission and emergency rule filed March 2, 1994, effective March 12, 1994, expired July 9, 1994. Rescinded and readopted: Filed Nov. 1, 1993, effective June 6, 1994. Emergency amendment filed July 25, 2008, effective Aug. 4, 2008, expired Jan. 30, 2009. Moved to 13 CSR 35-71.030 and amended: Filed July 25, 2008, effective Jan. 30, 2009. Amended: Filed Dec. 16, 2013, effective June 30, 2014.

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